

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ELIZABETH HIGGINS and SHAWN
SIMOENS, as co-Personal
Representatives of the Estate of Alexander
T. Simoens, deceased,

Plaintiffs,

vs.

JOACHIM DANKIW, JEANELLE MOORE,
ANDREW FREEMAN, MARK HAEFELE,
CHARLES M. BENAK, JIM SUTTLE,
FRANK BROWN, JIM VOKAL, GARRY
GERNANDT, DAN WELCH, FRANKLIN
THOMPSON, CHUCK SIGERSONJR.,
THOMAS WARREN, CITY OF OMAHA,
OMAHA POLICE DEPARTMENT, JUSTIN
GEYZA, MARJORIE DUPLEY, TROYIA
PRINCE, EARL PAUL STONE,
LAWRENCE R. REYNARD, JOHN AND
JANES DOES 1-9, agents, servants and
employees of the City who were on duty at
the City jail from September 7, 2007,
through September 9, 2007, and whose
real names are unknown; and JOHN AND
JANE DOES 10-20, agents, servants and
employees of the City who were on duty at
the City jail from September 7, 2007,
through September 9, 2007, and whose
real names are unknown;

Defendants.

8:08CV15

MEMORANDUM AND ORDER

This matter is before the court on the plaintiffs' motion for attorney fees, Filing No. [172](#); the plaintiffs' motion to dismiss certain defendants, Filing No. [183](#); and the parties' stipulation, Filing No. [176](#). This is a civil rights action pursuant to [42 U.S.C. § 1983](#).

The record shows that the defendants have submitted an offer of judgment under [Fed. R. Civ. P. 68](#). Filing No. [184](#), Ex. 1. In the offer of judgment, defendants offer to allow judgment to be taken against all or any one of them in favor of the plaintiffs in the total cumulative amount of seven hundred seventy-five thousand dollars and no cents (\$775,000.00), including costs, together with the reasonable attorney fees accrued to

date as determined by the court in accordance with [42 U.S.C. § 1988](#) and pertinent case law. *Id.* The parties stipulate that an award of attorneys' fees is appropriate under [42 U.S.C. § 1988](#) and that a reasonable amount of fees would be \$200,000.00 exclusive of any taxable or nontaxable costs or expenses which should not be awarded. Filing No. [182](#), Stipulation. The parties further stipulate that all defendants except the City of Omaha and Joachim Dankiw, whether sued in their official or individual capacities, should be dismissed prior to entry of judgment and that judgment should be entered solely against the defendant City of Omaha and defendant Joachim Dankiw. *Id.*

The plaintiffs move under [Fed. R. Civ. P. 41](#) to dismiss defendants Jeanelle Moore, Andrew Freeman, Mark Haefele, Justin Geyza, Marjorie Dupley, Troyia Prince, Earl (Paul) Stone, Larry Reynard, Charles Benak, Jim Suttle, Frank Brown, Jim Vokal, Garry Gernandt, Dan Welch, Franklin Thompson, Chuck Sigerson, Jr., and Thomas Warren. Filing No. [183](#).

Defendant City of Omaha has filed a notice stating that the offer of judgment has been accepted unconditionally and on its terms. Filing No. [184](#). The City further agrees that the restrictions imposed in Filing No. 177 regarding the sealing of pleadings may be lifted when judgment is entered. The court has reviewed the plaintiffs' application for fees and agrees with the parties that \$200,000.00 is a reasonable fee for a case of this nature and complexity. In view of the foregoing,

IT IS ORDERED:

1. The plaintiffs' motion for an award of attorney fees (Filing No. [176](#)) is granted.
2. Pursuant to stipulation of all parties, the plaintiffs' motion to dismiss (Filing No. [183](#)) is granted.
3. Defendants Jeanelle Moore, Andrew Freeman, Mark Haefele, Justin Geyza, Marjorie Dupley, Troyia Prince, Earl (Paul) Stone, Larry Reynard, Charles Benak, Jim Suttle, Frank Brown, Jim Vokal, Garry Gernandt, Dan Welch, Franklin Thompson, Chuck Sigerson, Jr., and Thomas Warren are dismissed.

4. A judgment in conformity with this order and the offer and acceptance of judgment will issue this date. Once the judgment is entered, the restrictions imposed in Filing No. 177 are lifted.

DATED this 12th day of July, 2012.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge